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April 3, 2009

*Via ECFS*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

*Re: FCC Consultative role in Broadband Provisions of the Recovery Act– GN Docket No. 09-40  
Notice of Ex Parte Presentation*

Dear Ms. Dortch:

On Thursday, April 2, 2009, the undersigned of Davis Wright Tremaine, LLP, along with Craig Rosenthal of Suddenlink Communications, Tom Larsen of Mediacom Communications Corporation, Pat Bresnan and Shawn Beqaj of Bresnan Communications, and Tom Simmons of Midcontinent Communications met with Ian Dillner and Katie King of the Wireline Competition Bureau, Kevin Holmes, John Spencer, and Brenda Boykin of the Wireless Telecommunications Bureau, and Jeff Cohen of the Public Safety and Homeland Security Bureau to discuss administration of broadband stimulus funds provided under the 2009 American Recovery and Reinvestment Act. In particular, the companies discussed the roles they could play in expanding broadband deployment and the proposed definitions of “broadband,” “unserved,” and “underserved areas.”

The discussions focused on the analysis presented in the companies’ attached April 2, 2009 letter, copies of which were distributed at the meeting.

Ms. Marlene H. Dortch  
April 3, 2009  
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Please let me know if you have any questions.

Respectfully submitted,

*s/ Steve Horvitz*

Steven J. Horvitz

cc: Ian Dillner  
Katie King  
Kevin Holmes  
John Spencer  
Brenda Boykin  
Jeff Cohen

April 2, 2009

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *FCC Consultative role in Broadband Provisions of the Recovery Act - GN Docket No. 09-40***

Dear Ms. Dortch:

The four undersigned rural broadband providers come together to respectfully submit summary comments urging the Commission to consider our proposed definitions of “broadband,” “unserved,” and “underserved areas” as it consults with the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) in their administration of broadband stimulus funds provided under the 2009 American Recovery and Reinvestment Act (ARRA).

Collectively, our companies provide a depth and breadth of understanding of the requirements to deliver broadband products and services to rural populations. In this regard, the map, attached hereto, illustrates the vast rural portions of the country we collectively serve with our expansive hybrid fiber coaxial networks. As a group, we provide service to more than 3 million subscribers, many in population centers having less than 1,000 homes passed.

Moreover, we are each a provider of voice, video and data services throughout most of our service footprint. Indeed, we epitomize the facilities-based competitive broadband provider that Congress hoped, and expected, would emerge upon enactment of the local competition provisions of the Communications Act. 47 U.S.C. § 251, *et. seq.* To that end, and consistent with the expressions of the ARRA, each has leveraged its high capacity video and broadband network to begin offering competitive services to millions of subscribers in the many rural markets served. Given our unique position as multistate rural broadband providers with far reaching advanced networks, we believe our participation will be key to the success of both the NTIA and RUS broadband stimulus programs.

**I. Definition of Broadband Service.** Central to the NTIA and RUS programs is the level of broadband services that would be eligible for grant or loan funding. We believe the current definitions of broadband service adopted by the Federal Communications Commission (FCC) and the RUS are inadequate. The agencies need to establish a minimum data rate speed that is consistent with modern technology, while taking into account the unique challenges of providing affordable service to rural residents. We recommend that 1.5 Mbps downstream and 256 kbps upstream be established as the minimum speed eligible for broadband grants and loans. We believe that this level ensures access to essential online services at affordable rates for end users living in remote rural areas such as in the territory served by our four companies. As the House-Senate conferees on the ARRA recognized, establishing too high a bar for eligibility could have the perverse effect of deterring investment, depriving those areas of jobs in building out broadband and perpetuating the lack of broadband service rather than remedying it.<sup>1</sup>

**II. Definition of “Unserved.”** We believe that extending the physical availability of broadband into unserved geographic areas should be the government’s highest priority in terms of distributing broadband

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<sup>1</sup> H. Conf. Rep. 111-16 (2009) at 775.

grants for infrastructure construction. Unserved should be defined as end-users who do not have access to broadband service at the minimum data rates of 1.5 Mbps downstream and 256 kbps upstream . Further, the Commission, in its consultative role, should advise NTIA and RUS not to limit its definition of unserved to only "last mile" considerations. In many rural areas, one of the most "unserved" aspects of the telecommunications network lies in the "middle mile" of the network. If the factor preventing the unserved geographic area from receiving broadband service is lack of capacity in the "middle mile" of the network, then applicants should be able to receive funding to remedy "middle mile" issues.

Also, the grant and loan programs should recognize the differences between mobile and fixed broadband service. The presence of mobile broadband service in a given market should not be considered when determining whether the area is "served" with respect to a fixed broadband service and vice versa. Mobile and fixed broadband services are very different products and should be treated as such when it comes to determining whether or not a community or area is served or unserved.

**III. Definition of "Underserved."** Promoting more robust development of broadband in underserved areas where broadband is already available should be secondary to deploying broadband in unserved areas because the problems associated with underserved areas, by their nature, are not as substantial as those faced by areas without access to broadband altogether. In making the determination as to what constitutes an underserved area, the FCC should advise the NTIA and RUS to consider the broadband speeds that are available to residents of a particular geographic area. Only those geographic areas where there is not at least one provider offering broadband access at minimum speeds of 3 Mbps downstream and 512 kbps upstream should be considered underserved.

It is imperative that the definition of underserved be crafted to ensure that the limited pool of ARRA funds are primarily available to address the problem of providing broadband access to unserved Americans. NTIA and RUS, in consultation with the FCC, would be correct to conclude that no infrastructure subsidy is appropriate in any geographic area where consumers already have the option of purchasing broadband of adequate speed. NTIA and RUS should be extremely careful not to award grants or loans for overbuilding in a given market where an incumbent provider is already providing adequate broadband service.

Thank you for your consideration of these issues.

Sincerely,

*Bresnan Communications, LLC*

*Mediacom Communications, LLC*

*Midcontinent Communications, LLC*

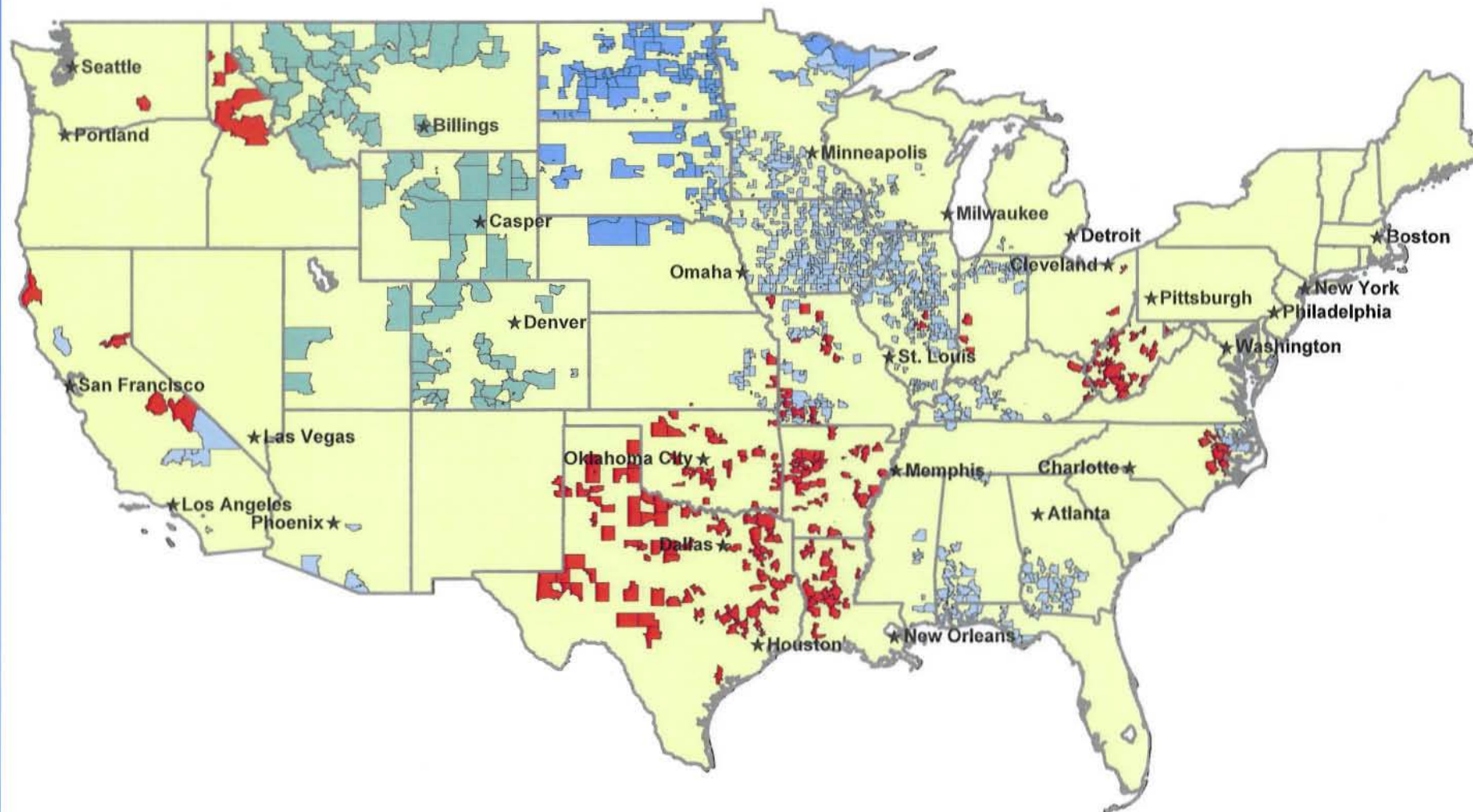
*Suddenlink Communications*

Attachment



## Suddenlink, Bresnan, Midcontinent and Mediacom

### Current Cable Ownership



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